



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 242 OF 2004**

**IN THE MATTER OF THE ESTATE OF JULIA WAMBUI KAHUGU – (DECEASED)**

**JOSEPH MUTHIORA MURU.....APPLICANT**

**VERSUS**

**GEORGE KAHUGU CHEGE.....RESPONDENT**

**RULING**

1. The deceased Julia Wambui Kahugu alias Wambui Kahugu alias Wambui Kahugo died intestate on 25<sup>th</sup> November 1998 at Juja. She was survived by her husband Muru Mbatia (the widower) and her six sons Benson Guchu Chege, John Kimani Muru, Ndungu Chege, George Kahugu Chege (the respondent), Peter Kinuthia Chege and Joseph Muthiura Muru (the applicant). The widower filed **Succession Cause No. 116 of 2000** at the Chief Magistrate's Court at Thika seeking grant of letters of administration intestate. A grant was issued on 3<sup>rd</sup> July 2000 and confirmed on 27<sup>th</sup> February 2001. In the certificate each of the children were to equally share Juja/Kiaura Block 1/173. The remaining two parcels were to be shared equally among all the children except John Kimani Muru. The sharing was in accordance with the proposal in the affidavit sworn by the widower in support of the application for the confirmation of grant.

2. The widower died on 3<sup>rd</sup> December 2001. The children sat and signed a document allowing one of them (the respondent) to apply for the amendment of the grant and certificate of confirmation so that he would take over as the administrator of the estate. The respondent filed the application on 4<sup>th</sup> June 2002. The same was allowed and a fresh grant and certificate of confirmation were issued on 12<sup>th</sup> June 2002. The shares in the certificate remained the same.

3. On 29<sup>th</sup> January 2004 the applicant filed the present application seeking to have the grants revoked. The reasons were that he had not been consulted and involved in the petition and distribution of the estate; that the deceased (his mother) had before death gifted her the parcel in Gachororo Farmers Certificate Ltd No. 197 and yet this information had been concealed from the court at the time of the distribution, something that was both fraudulent and amounted to material non-disclosure. In support of the said gift *intervivos* he annexed a document which showed that the deceased was a shareholder of Gachororo Farmers Ltd, and was holder by share certificate No. 197, and that on 19<sup>th</sup> June 1996 she signed to transfer the same share to him. He stated that the deceased died before the transfer was finalised. Mwaura Ngugi was the chairman of the company. He deposed that indeed the transfer had not been finalised.

4. The respondent opposed the application. In his replying affidavit, he stated that the applicant consented to their father petitioning for the grant of letters of administration. Indeed it is true that the applicant signed the petition. On the distribution, the respondent stated that all the time that their father was alive it was known that the estate was going to be shared as above. This is why, he went on, when their father shared the estate during confirmation the applicant had no issue; that he was, in fact, in court when the estate was shared at confirmation. The respondent further stated that when the deceased was transferring the parcel of land in issue to the applicant, it was for him to keep it for the sharing by all the brothers.

5. I have indicated that the widower died on 3<sup>rd</sup> December 2001. The grant had been confirmed on 27<sup>th</sup> February 2001. The applicant does not say he did not know about the confirmation. He did not swear a further affidavit to say he was not in court when the grant was confirmed, and the distribution done. When he subsequently consented to having the respondent substitute their father as the administrator, the certificate of confirmation that they were seeking to amend was there and showed the parcel in dispute had been shared among them. He did not raise a finger. A fresh certificate came out on 12<sup>th</sup> June 2002. He did nothing. It took him about two years to bring the instant application.

6. I have considered all the evidence and documents that were placed in court in respect of this application. I accept the version by the respondent and reject that by the applicant. I find that the application is an afterthought. It is consequently dismissed with costs.

**DATED and SIGNED at NAIROBI this 22<sup>ND</sup> day of MAY 2019**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 27<sup>TH</sup> day of MAY 2019**

**J.N. ONYIEGO**

**JUDGE**